IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4363 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

USHA K RAJPUT

Versus

HEALTH COMMISSIONER

Appearance:

Spl. C.A. No. 4363 of 1989

MR SHIVANG J. SHUKLA for Petitioner No. 1-2
RULE SERVED for Respondent No. 1-2
MR LR PUJARI, AGP for Respondent No. 3-4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 26/07/2002

ORAL JUDGEMENT

1. By means of this petition, the petitioners have prayed for directions to the respondents to forthwith consider the cases of the petitioners for promotion to the post of CDPO from the date when they became eligible as per the recruitment rules notified on 6-10-1983 and direct the respondents to give them deemed date and all other consequential benefits and further direct the respondents to act as per the guidelines issued by the Central Government and to maintain ratio between promotees and direct recruits as 75% and 25% respectively and also for quashing and setting aside Rule (2) of the Child Development Project Officer (Female) Gujarat Public Health Services Class-II Recruitment Rules, 1983 (hereinafter referred to as " the Rules 1983" (for the sake of brevity and convenience) as ultra vires of Articles 14, 16 and 21 of the Constitution of India.

2. The petitioners are working as "Mukhya Sevika" (Supervisor) since last several years. The petitioner no. 1 had joined services in the month of February 1976 and she continued till the month of May, 1986. From January 1986 the post of Mukhya Sevika (Supervisor) has been upgraded by giving additional special pay of Rs.100/-. Now the designation of the petitioner no. 1 has been changed as Assistant Child Development Project Officer which is equivalent to the post of "Mukhya Sevika" (Supervisor) and the petitioner no. 1 is being paid special additional pay of Rs.100/-. The petitioner no. 2 also joined her service as Mukhya Sevika in the year 1962 and she continued to discharge her duties as such till 1986. Her post has also been upgraded and her designation has also been changed as Assistant Child Development Project Officer. From the date of their joining as Mukhya Sevika (Supervisor) the petitioners are discharging their duties sincerely. No adverse remarks has not been communicated to them so far. The post of Child Development Project Officer which is Class-II Gazetted post is filled up by promotion from amongst "Mukhya Sevika" and by direct selection. The ratio between them is 2:1 as per the Rules, 1983 which are annexed at Annexure-A notified on 6-10-1983. For consideration of promotion to the post of CDPO, the proved merit and efficiency is required. Both the petitioners are eligible for consideration of promotion as per the Rules, 1983. The petitioners made various representations for promotion but they have not been responded. Meanwhile, the Rules, 1989 have come in existence vide notification dated 15-12-1989, Health and Family Welfare Department, whereby a person can be

promoted on the proved merit and efficiency amongst persons who have worked for not less seven years as "Mukhya Sevika" and they are also required to pass departmental examination prescribed by the Government and subject to the condition that they possession educational qualifications prescribed for direct selection in Rule 3 (b). Rule 3 (b) requires educational qualification having possess a decree in Home Science or Sociology or Child Development or Nutrition of a recognized University. It is also provided by the Rules that the appointment by promotion and by direct selection shall be made in the ratio of 3: 1 respectively. The petitioners are having requisite educational qualification prescribed by the Rules, 1983 as well as 1989. But Rules, 1983 do not require academic qualification but require departmental examination to be passed by the persons proposed to be promoted. In spite of several representations, the respondents have not even cared to respond them and they have not passed any suitable order. Under the old Rules, 1983, the petitioners are not required to pass any departmental examination. Under the old Rules, no educational qualification is required but the experience of five years is only required.

3. Heard the learned counsel for the parties and perused the relevant material on the record.

4. The contention of the learned counsel for the petitioner is that since the petitioners no. 1 and 2 have worked for more than 5 years from the date of their joining services and they were eligible for promotion in the year 1967 and 1981 respectively. As such, both the petitioners were eligible for promotion in the year 1983 on the basis of Rules, dated 6-10-1983. As both the petitioners had requisite experience of more than five years, they were not required to pass any departmental examination and there was no requirement of educational qualifications. The educational qualification was required for only direct recruit. As the petitioners have worked in the department as "Mukhya Sevika", they were entitled for promotion from the year 1983 on the basis of the Rules which came into existence on 6-10-1983. He has also relied on the decision of this Court in the case of P.G. Vyas & Others Vs. State of Gujarat & Ors. reported in 200 (1)GCD, 181 (Guj.). In the said case, the petitioners no.1 and 3 were serving as Child Development Project Officer and the petitioner no. 2 was serving as "Mukhaya Sevika" and on completion 9 years of their service in the feeder cadre as per the higher pay scale benefit which is stated that they are entitled for the higher pay scale of Rs.2000-3500 but

that has not been granted to the petitioners on the ground that they have not passed the prescribed departmental examination for promotion to higher post in their claim of promotion from the feeder cadre. Departmental Examination was required to be passed under the Gujarat Public Health Service Examination Rules, 1983 which came into force after the date on which the petitioners had already completed 9 years in the 1982 and the respondents could not have insisted for passing of the departmental examination by them to make themselves eligible for the benefit of higher pay-scale. The benefit of higher pay-scale was not given to the petitioners because they have not passed the departmental examination. This Court directed the respondent no. 1 to consider the case of the petitioenrs for benefit of higher pay scale as per the Govt. Resolution dated 16-8-1994 and in case they are found eligible and entitle for these benefits, then, these benefits should be given to them from the date as it would have been available to them under the resolution, aforesaid. As such, on the basis of the aforesaid decision, the contention of the learned counsel for the petitioners is that the petitioners were eligible for promotion under the old Rules which came into existence on 6-10-1983. As they had experience of more than five years, the petitioners cannot be directed to pass the departmental examination and have educational qualifications as per the new Rules which came into existence on 15-12-1989 and the petitioners' promotion is not subject to the conditions required by the new Rules dated 15-12-1989.

5. On the contrary, learned A.G.P. has contended that the petitioners' case has not been considered as they are not possessing the requisite qualification and they have not passed the departmental examination as per the new Rules dated 15-12-1989.

6. I have considered the submissions made by the learned counsel for the petitioners and the material on record. The petitioners have already been eligible for promotion to the higher post as per the old Rules which came into operation and hence the Rules 1983 would be applicable for eligibility for promotion of the petitioners to the higher grade. Rules, 1983 do not require any departmental examination and requisite educational qualification but they require only experience as required under Rule 2 A of the Rules, 1983.

7. Learned A.G.P. could not point out any reason on which the petitioners have been denied that they have not been eligible for promotion. In the facts and

circumstances of the case, the respondents are directed to consider the case of the petitioners for higher grade under the Rules, 1983 within a period of two months from the date of receipt of a certified copy of this order. In case they are found eligible and entitled for benefits of higher grade as claimed by them in the petition, they should be given that benefit of higher grade from the date when they were available to them under the notification dated 6-10-1983. Rule is made absolute, to the afore

(Kundan Singh, J.)

/JVSatwara/